

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8278 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO
1 to 5 - No

CHANDRAPRABHA K ACHARYA

Versus

STATE OF GUJARAT

Appearance:

Ms SAGAR SADHANA for Petitioner
MR VM PANCHOLI, AGP for Respondent No. 1
RULE NOT RECD BACK for Respondent No. 3
RULE SERVED for Respondent No. 4, 5, 6, 7, 8

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 15/07/1999

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner has challenged, inter alia, the order dated 23.11.1964 passed by the Special Superintendent, Land Records, Rajkot terminating the services of K.H. Acharya, late husband of the petitioner (hereinafter referred to as "the deceased") with effect

from 12.5.1961 on the ground of his continuous unauthorized absence. The petitioner has also prayed for a direction to the respondents to pay the petitioner family pension, death-cum-retirement gratuity and all other benefits on the basis that the deceased was in service from 1952 to 8.5.1972 when the deceased expired.

2. The petition is resisted by the respondents. Affidavit in reply is filed by Mr KM Vyas, Assistant Settlement Commissioner. Although the said affidavit dated 6.4.1989 was served upon the petitioner through her counsel on 15.4.1989, no rejoinder thereto is filed.

3. It appears from the pleadings that the deceased was employed as a Surveyor in the office of the Survey Mamlatdar, Jamnagar. The deceased had applied for leave for the period from 9.2.1961 to 9.4.1961. In the meantime, the aforesaid office came to be closed down and, therefore, the deceased was transferred as a Surveyor in the office of the Mamlatdar, Dhangadhra. The deceased did not report for duty at Dhangadhra and remained continuously absent. While he was granted leave upto 9.4.1961, as leave without pay, further leave without pay was granted to him till 11.5.1961. Ultimately, for a period of three years, the deceased did not report for duty. The aforesaid order dated 23.11.1964 was never challenged by the deceased or the petitioner. The deceased had joined service on 1.6.1952 and had served in the office of respondent No. 5 till 28.2.1961 and his services were terminated with effect from 12.5.1961. Thus, the petitioner had not completed 10 years service. The deceased was granted leave without pay till 11.5.1961. Since under Rule 33 of the Bombay Civil Services Rules, leave without pay cannot be granted for more than 90 days and also because the deceased remained absent for more than three years, the respondents terminated the services of the deceased with effect from 12.5.1961. Hence, the deceased had put in service of only 8 years, 11 months and 13 days. Since the deceased had not put in 10 years service, according to the respondents, the petitioner is not entitled to any family pension.

4. The learned counsel for the petitioner has submitted as under :-

- (i) The termination order was illegal, as the services of the deceased were terminated without holding any inquiry and the termination order was not even served on the deceased.

(ii) Since the deceased had put in more than five years service, the deceased was entitled to pension in view of the Government Resolution dated 21.4.1982 and the petitioner was entitled to get family pension.

The said Resolution covers the following categories of employees :-

(a) The employees who expire after their retirement and who are in receipt of superannuation pension and other specified categories of pension.

(b) The employees who expire while in service after completion of minimum 5 years of continuous service.

5. It is not possible to accept the aforesaid contention urged on behalf of the petitioner as the petitioner's husband expired in 1972 after his services were terminated in 1964 with effect from 12.5.1961. Hence, the instant case does not come within the purview of the Government Resolution dated 21.4.1982.

6. As regards the challenge to the order dated 23.11.1964, this Court does not entertain the said challenge in view of the gross delay of 24 years in challenging the said order.

It is not necessary to overlook the delay in filing this petition. It is stated in the reply affidavit that the petitioner has made incorrect statement that the petitioner is not having any source of income for maintenance of her daughter. It is pointed out that the petitioner is serving as a Teacher at Shrimad Dayanand Kanya Vidhyalay, Jamnagar. Certificate dated 31.1.1988 is produced Annexure III to the reply affidavit which shows that the petitioner was employed as an Assistant Teacher at the aforesaid school since 11.6.1973 and has been rendering services at the said school. The respondent has also relied upon the statement dated 3.12.1987 of Kaushiklal Hasmukhlal Acharya, elder brother of the deceased, who also admitted that the deceased had not rendered any services after his transfer from Jamnagar to Dhangadhra in 1961.

7. In view of the fact that the deceased husband of the petitioner had admittedly put in service of 8 years, 11 months and 13 days, if any benefits are admissible to

the petitioner and her daughter on that basis, the respondents shall grant the same within three months from the date of receipt of the writ of this Court or a certified copy of this judgment, whichever is earlier.

8. Subject to the aforesaid observations, the petition is dismissed and Rule is discharged with no order as to costs.

Sd/-

July 15, 1999 (M.S. Shah, J.)

sundar/-